IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16478 of 2005
With
SPECIAL CIVIL APPLICATION No. 16479 of 2005
With
SPECIAL CIVIL APPLICATION No. 16480 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER - Petitioner(s)

Versus

MANGABHAI DEVABHAI HARIJAN - Respondent(s)

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Appearance :
MR PV HATHI for Petitioner No(s).: 1.
MR KISHOR M PAUL for Respondent No(s).: 1.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 12/08/2005

ORAL COMMON JUDGMENT

As common question of law and facts arise in all these 3 petitions, they are being disposed of by this common judgment and order.

2. Rule in each of the matter. Shri Kishor M. Paul, learned advocate waives service of Rule on behalf of concerned workman in each of the petition. With the consent of the learned advocates appearing on behalf of the parties, the Special Civil Applications are heard, decided and disposed of finally today.

3. In all these petitions, the common petitioner, District Panchayat, Rajkot, has challenged the legality and validity of the judgment and award passed by the Labour Court, Rajkot, dated 28.2.2005 in Reference (LCR) No. 488/1988, Reference (LCR) No. 487/1988 and Reference (LCR) No. 484/1988 by which the Labour Court, Rajkot has directed the petitioner to reinstate the concerned workman with continuity of service and 10% backwages.

4. All the concerned respondent workmen raised industrial dispute challenging their alleged termination/retrenchment with effect from 20th April 1987 and the said disputes were referred to the Labour Court, Rajkot being Reference(LCR) No. 488/1988, Reference (LCR) No. 487/1988 and Reference (LCR) No. 484/1988. All the aforesaid References came to be heard together. It was contended on behalf of the concerned respondent workman that they were working with the petitioner since many years and their services came to be terminated and/or they came to be retrenched orally with effect from 20th

September 1986 illegally and without following any procedure as required under Section 25(F) of The Industrial Disputes Act, 1947 and that they have not prepared seniority list and junior persons came to be continued. The said References came to be resisted and opposed by the petitioners. It was contended on behalf of the petitioners that all the workmen were serving as daily-wagers on Nominal Muster Roll (NMR) during the season when water was being distributed to the farmers for irrigation and as and when water was available in the canal and that none of the workmen had worked for 12 months continuously. It was further submitted that as and when the work was available they were offered the work and therefore it was requested to dismiss the References.

5. The Labour Court, Rajkot, held that the concerned workmen have worked continuously as defined in Section 25(B) of The Industrial Disputes Act, 1947; they have worked for more than 240 days; before retrenching them and/or before terminating their services no procedure as required under Section 25(F) of the said Act had been followed and therefore the same is in breach of Section 25(F) of the said Act; and therefore partly allowed the aforesaid References directing the petitioner to reinstate the respondent workmen with continuity of service, however with 10% of the backwages. Being aggrieved and dissatisfied with the judgment and awards passed by the Labour Court, Rajkot, dated 28.2.2005 in

Reference(LCR) No. 488/1988, Reference (LCR) No. 487/1988 and Reference (LCR) No. 484/1988, the petitioners have preferred the present Special Civil Applications under Articles 226/227 of the Constitution of India.

6. Shri PV Hathi, learned advocate appearing on behalf of the petitioners, has vehemently submitted that the finding given by the Labour Court with regard to completion of 240 days by the concerned workman is based on no evidence; that the Labour Court has not properly considered the evidence on record with regard to the work being seasonal in nature; and that the same was offered as and when water was available in the canal for the purpose of distribution to farmers for irrigation. It is also further submitted by Shri Hathi, the learned advocate that the Labour Court has given the finding with regard to continuous working as well as completion of 240 days on non-production of some of the muster-rolls by the petitioners by shifting the onus upon the petitioners rather than upon the respondent workmen. It is also further submitted by him that even in the statement of claim it was not the case of the concerned workmen that they have completed 240 days and as such no evidence has been adduced on behalf of the respondent workmen to prove that they have completed 240 days in the last preceding year. It is also further submitted by him that in fact no particulars are given by the concerned workmen with

regard to juniors being continued and/or new persons being appointed and therefore it is requested to allow the present Special Civil Applications.

7. Shri Kishor M. Paul, learned advocate, appearing on behalf of the concerned workmen, has submitted that on appreciation of evidence the Labour Court has come to the conclusion that the concerned workmen had worked for more than 240 days continuously as defined in Section 25(B) of the I.D. Act which is not required to be interfered with by this Court in exercise of powers under Articles 226/227 of the Constitution of India. He has further submitted that the concerned workmen were serving since last many years and therefore it is to be presumed that they were working continuously as required under Section 25(B) of the I.D. Act and before terminating their services they were required to be issued the notices and/or were required to be paid retrenchment compensation and/or notice pay as required under Section 25(F) of the I.D. Act which is not followed, and therefore it is submitted that the Labour Court has rightly directed the petitioners to reinstate the concerned workmen. In the alternative, it is submitted that if this Court ultimately comes to the conclusion that the finding given by the Labour Court is based upon no evidence and/or there is no sufficient evidence in that case the matter may be remanded to the Labour Court for its fresh decision so that the concerned workmen can produce

and lead evidence to prove that they have worked continuously for 240 days in the last preceding year for which the Labour Court may be directed to decide and dispose of the References as early as possible in a time bound programme.

8. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that all the concerned workmen were serving as daily-wagers as linemen in the canal. The petitioners' contention is that they were doing the work of distributing water from the canal to the farmers for irrigation and that the same was being done whenever there was water in the canal and that it was seasonal in nature. The said aspect, i.e., whether the work which was being done by the concerned workman was seasonal in nature or not has not been considered by the Labour Court. It also appears from the record and on going through the statement of claim that it was not the case of concerned workman that they have completed 240 days in the last preceding year. No evidence has been adduced on behalf of the concerned workman to prove that they have worked for 240 days in the last preceding year. The Labour Court has given the finding with regard to completion of 240 days mainly on the ground that the witness who was examined on behalf of the petitioners had not produced the muster-rolls etc. It is required to be noted, that as held by the Hon'ble Supreme Court in the case of

Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Another, reported in (2004) 8 SCC Page 161; in the case of Municipal Corporation, Faridabad Vs. Shri Niwas, reported in (2004) 8 SCC Page 195; and in the case of Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Another, reported in AIR 2005 Supreme Court Weekly 3160, the onus is on the respondent workmen to first prove by leading evidence that he has completed 240 days in the last preceding year, and non-production of muster-rolls, *ipso facto,* will not lead to any adverse inference and to hold that the concerned workman has completed more than 240 days in the last preceding year. Under the circumstances, more particularly when it was not the case of the concerned workmen in the Statement of Claim that they have completed 240 days in the last preceding year, merely due to non-production of muster-rolls itself, the Labour Court was not justified in holding that the concerned workman has worked for 240 days in the last preceding year. In the facts and circumstances and considering the decisions of the Hon'ble Supreme Court, therefore, the finding given by the Labour Court with regard to completion of 240 days which is based upon no evidence is required to be quashed and set aside and as such the matters are required to be remanded to the Labour Court for its fresh decision.

8.1. So far as the contention on behalf of the respondent workmen that junior persons are continued

and/or there was no retrenchment is concerned, as such there is no evidence to that effect and therefore in absence of any particulars given it cannot be said that their juniors are continued and/or new recruitments have been made.

9. For the reasons stated hereinabove, and considering the aforesaid facts and circumstances, all the petitions succeed. The judgment and award passed by the Labour Court, Rajkot dated 28.2.2005 in Reference(LCR) No. 488/1988, Reference (LCR) No. 487/1988 and Reference (LCR) No. 484/1988, is quashed and set aside and the matters are remanded to the Labour Court, Rajkot for its fresh decision. It will be open for the concerned parties to adduce fresh evidence which may also be considered by the Labour Court, Rajkot. The Labour Court is directed to decide and dispose of the aforesaid References within the period of six months from the date of receipt of this order. Rule is made absolute in each matter. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.